IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 13423 of 2004

Between:

Ganji Atchayamma, W/o. Late Nagaraju,
Ramachandrapuram Village, Panduru Post-531 085 Kotauratla (M)
Visakhapatnam

District.

..... PETITIONER

AND

1 The Accountant General (A&E) A.P., Hyderabad.
2 The Joint Registrar-cum-District Cooperative Officer, Visakhapatnam.
3 Siripuralu Mary Sarojani,
Sarojani Foundation, Door No. 25-11-1, Maharanipet, Ikoneru, Toorpugattu,
Vizianagaram - 2, Vizianagaram District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in not releasing the pensionary benefits to the petitioner as illegal, arbitrary and contrary to the judgment and decree passed in O.S.No. 163/1996 dt. 18-9-2000 on the file of Junior Civil Judge Narsipatnam and consequently declare the impugned letter dt. 1-7-2003 as null and void.

Counsel for the Petitioner: SMT.A.CHAYA DEVI

Counsel for the Respondent No.1: Mr.A.Rajasekhar Reddy, SC

Counsel for the Respondent No.2: GP FOR COOPERATION

Counsel for the Respondent No.3: --

The Court made the following:

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ORDER:

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The petitioner claims that she is the legally wedded wife of late Ganji Nagaraju, an employee in the Cooperative Department.

2.The petitioner claims that during his lifetime, her husband nominated her as the person entitled to receive the amounts, standing to the credit of her husband. He also nominated the petitioner to receive the family benefit fund. Her husband died on 05.02.1996 while in service, working as Co-operative Sub-Registrar in the office of the District Cooperative Audit Office, Visakhapatnam. The Mandal Revenue Officer, Kotauratla issued a legal heir certificate to the petitioner on 23.04.1996, after conducting a detailed enquiry. As per the said certificate, the petitioner is the legal heir of the deceased employee, to receive the family pension and gratuity, due to the deceased from the Department.

3. The petitioner further submits that the 3rd respondent, along with her son, filed a suit in O.S.163 of 1996 on the file of the Court of Junior Civil Judge, Narsipatnam , for declaration that she is the legally wedded wife and her son is the son of the deceased Nagaraju, and for a consequential relief, directing the District Cooperative Officer, Visakhapatnam to pay the amounts, which are payable due to the death of the deceased. During the pendency of the said suit, the petitioner and the 3rd respondent entered into a compromise and filed a compromise memo, and the suit was decreed in terms of the said compromise.

4. The petitioner further submits that after the compromise decree of the Civil Court dated 18.09.2000, she made an application to the Mandal Revenue Officer for issuance of non-earning member certificate, and the Mandal Revenue Officer issued the said certificate on 17.11.2001. Thereafter, the 2nd respondent addressed a letter to the 1st respondent on 21.12.2001, forwarding the pension proposal of the petitioner for the purpose of release of pension. In the said letter the 2nd respondent

mentioned that due to disputes in between the petitioner and the 3rd respondent, the pension papers could not be submitted earlier. The 2nd respondent recommended for release of pension as per the terms of the compromise, to the petitioner, as well as to the 3rd respondent. The 1st respondent issued a letter on 20.02.2002 mentioning the amounts, payable, and he further mentioned that the pensionary benefits have to be paid to the authorized legal heirs of the Government servant only, that the second marriage is void, and therefore, requested the 2nd respondent to examine the matter once again.

5. The petitioner further submits that the 2nd respondent gave a reply on 29.04.2002 to the 1st respondent that the 1st respondent may sanction the pensionary benefits authorizing the petitioner. When there was no response from the 1st respondent, the 2nd respondent addressed another letter on 16.05.2003 to the 1st respondent, requesting him to consider the request of the petitioner for payment of pension, by issuing necessary orders at an early date. The 1st respondent, on 01.07.2003, gave a reply stating that the Government servant has not obtained permission for second marriage during the life time of his first wife. Therefore, the marriage itself is void, consequently, authorizing pension payment does not arise.

6. The petitioner, being aggrieved by the reply of the 1st respondent dated 01.07.2003, filed the present Writ Petition, seeking a writ of mandamus, declaring the order of the 1st respondent dated 01.07.2003, in not releasing the pensionary benefits, is illegal, arbitrary and contrary to the Judgment and Decree of the Civil Court.

7. The 1st respondent is not disputing the relationship of the petitioner with the deceased. The 1st respondent has to pass appropriate orders, either accepting the terms of the Decree, or if the 1st respondent finds that the decree of the Civil Court is not in accordance with the existing Rules regarding the pension, he may pass appropriate orders in releasing the entire retirement benefits of the deceased in favour of the petitioner. Keeping the matter for years together without passing orders either way is causing any amount of prejudice to the petitioner.

8. The 1st respondent is, therefore, directed to pass appropriate orders within two

months from the date of receipt of a copy of this order, either accepting the terms of the decree of the Civil Court dated 18.09.2000, or if the Civil Court decree is not in accordance with the existing pension rules, to pass appropriate orders in releasing all the retirement benefits of the deceased in favour of the petitioner without fail.

9. The Writ Petition is, accordingly, disposed of. No order as to costs.

dsr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To:

1. The Accountant General (A&E), A.P., Hyderabad

2. The Joint Registrar-cum-District Cooperative Officer,Visakhapatnam

3. Two CCs to the Government Pleader for Cooperation,

High Court Buildings, Hyderabad

4. Two CD copies.